D.T.E. 03-114

Petition of The Berkshire Gas Company for Approval of Service Agreements for Firm Liquid Service and Firm Vapor Service between The Berkshire Gas Company and Distrigas of Massachusetts, LLC, pursuant to G.L. c. 164, § 94A.

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Boston, MA 02111
FOR: The Berkshire Gas Company
Petitioner

I. INTRODUCTION

On October 31, 2003, The Berkshire Gas Company ("Berkshire" or "Company"), pursuant to G.L. c. 164, § 94A, submitted a petition to the Department of Telecommunications and Energy ("Department") for approval of three service agreements with: (1) Distrigas of Massachusetts ("DOMAC") for firm vapor service ("Vapor Agreement"); (2) DOMAC for firm liquid service ("Liquid Agreement");[1] and (3) Mystic River Energy Corporation, a DOMAC affiliate ("Mystic River Agreement"), which would supplement the Vapor Agreement. All three agreements are effective from November 1, 2003 through October 31, 2008.[2] This case has been docketed as D.T.E. 03-114.

On December 15, 2003, pursuant to notice duly issued, the Department conducted a public hearing. No Petitions to Intervene were filed. On March 4, 2004, the Hearing Officer granted the Company's Motion to enter its exhibits into evidence. The record in this proceeding consists of fifteen exhibits, including six responses to information requests, testimony and transcripts.

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1 The gas supplied under the Vapor Agreement will be shipped using backhaul transportation, while the Liquid Agreement primarily calls for supplies to be shipped via trucking (Exh. WLB-1, at 9-10). Backhaul transportation is a transaction during which gas is delivered into the pipeline system at a point downstream of the point of receipt, otherwise LNG is transported in specially designed trucks. Firm service is service offered to customers under a contract that anticipates no interruptions; interruptible service permits curtailment or cessation of service at the discretion of the provider.

2 The contracts, though filed the day before the effective date of contract performance, are nonetheless valid under § 94A because each contract contains a clause subjecting its price provisions to Department review. See G.L. c. 164, § 94A; Exhs. WLB-2, at 7; WLB-4 at 7.

II. DESCRIPTION OF COMPANY'S PROPOSAL

The three agreements submitted by the Company contain the following provisions: (1) the liquid agreement calls for DOMAC to deliver firm liquid service of up to 2,000 MMBtu per day with a total annual contract quantity ("ACQ") not to exceed 88,000 MMBtu in each year of the agreement; (2) the vapor agreement calls for DOMAC to deliver firm vapor service of up to 2,000 MMBtu per day with a total ACQ not to exceed 302,000 MMBtu in each year of the contract; and (3) the Mystic River agreement is designed to supplement the Vapor Agreement by providing a form of back-up service in limited circumstances where DOMAC might be unable to perform on the Vapor Agreement (Exh. WLB-1, at 2,9-10). In such circumstances, Mystic River would provide the equivalent of vapor service consistent with the terms and conditions of the Vapor Agreement (id.). In addition, both the Liquid Agreement and the Vapor Agreement allow the Company to increase the Maximum Daily Quantity ("MDQ") of each contract up to an additional 1,000 MMBtu per day on a yearly basis, and thereby increase the ACQ of the Liquid and Vapor Agreements by up to 10,000 MMBtu and 151,000 MMBtu, respectively (id. at 9-10).

Berkshire states that these agreements: (1) are consistent with the portfolio objectives established in the Company's most recent forecast and supply plan in Berkshire Gas Company, D.T.E. 02-17 (2002); and (2) compare favorably to the range of alternatives reasonably available to the Company and its customers (Exh. WLB-1, at 3-4). The Company executed the three agreements to replace a previously approved five-year gas supply contract with DOMAC that expired October 31, 2003 ("1998 DOMAC Agreement") (id. at 3). The Company states that Berkshire continues to require liquefied natural gas ("LNG") at its Whately, Massachusetts LNG facility during the winter period to supplement its existing firm pipeline supplies for peakshaving purposes and to maintain system integrity in the Greenfield Division during peak and near peak periods (id. at 4-5). The Company explains that the Whately LNG facility also provides the Company with a critical source of supply to remain in balance on the Tennessee Gas Pipeline Company system during extreme conditions, such as those times when operational flow orders are issued (id. at 5). The Company asserts that LNG vapor service delivered by backhaul transportation is a reliable least-cost resource during the winter period (id.). The Company also notes that the vapor service represents a more flexible and economical alternative to contracting for long-haul firm pipeline capacity and associated supply (id.).

III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under Section 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Bay State Gas Company, D.T.E. 98-79, at 1; Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a local distribution company must show, at the time of the acquisition or contract renegotiation, that the acquisition (1) is consistent with the Company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the Company and its customers, including releasing capacity to customers migrating to transportation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

IV. ANALYSIS AND FINDINGS

The Department notes that it approved Berkshire's supply planning process in its most recent forecast and supply plan, Berkshire Gas Company, D.T.E. 02-17 (2002). At that time, the Department deemed Berkshire's portfolio of resources to be adequate to meet forecast sendout requirements. Id. at 20. Because the proposed Liquid, Vapor and Mystic River Agreements will serve to replace the expired 1998 DOMAC Agreement and enhance the Company's goal of achieving least cost and reliable service, the Department finds the Company's proposal to be consistent with Berkshire's portfolio objectives.

In determining whether a gas supply or capacity contract compares favorably to the range of alternative options reasonably available, the Department must consider both price and non-price attributes as part of a comprehensive assessment of the proposed contract. D.P.U. 94-174-A at 2. For both the Liquid Agreement and the Vapor Agreement, the Company negotiated a pricing structure based on the NYMEX index (Exh. WLB-1, at 11). The proposed contracts enhance the flexibility of Berkshire's supply relative to the 1998 DOMAC Agreement insofar as the collective ACQ of the Liquid and Vapor Agreements exceeds the ACQ of the 1998 DOMAC Agreement and allow the Company to take LNG in both liquid and vapor forms on the same day (id. at 12-13). In addition, the proposed agreements allow the Company to adjust the MDQ of each contract in the event of changes in system demand or if customers migrate off Berkshire's system (id. at 13). The Department finds that the Company adequately evaluated the price and non-price factors of the Agreements and the contribution of those factors to the strength of Berkshire's overall portfolio. Accordingly, the Department finds that Berkshire selected a resource that compares favorably to the range of alternative options reasonably available to the Company.

Since both the Liquid Agreement and the Vapor Agreement are consistent with the Company's portfolio objectives and compare favorably to the range of alternative options reasonably available to the Company and its customers, the Department finds that Berkshire's acquisition of these resources is consistent with the public interest and, therefore these agreements are approved. Regarding the inclusion of the Mystic River Agreement, which provides that Mystic River shall, upon the request of DOMAC, deliver gas to Berkshire in lieu of DOMAC's service pursuant to the Vapor Agreement, the Department notes that this supplemental agreement enhances reliability and diversity by providing an additional source of gas commodity. In particular, the Mystic River Agreement provides an equivalent service consistent with the terms and conditions of the Vapor Agreement while not affecting DOMAC's obligation pursuant to the Vapor Agreement (id. at 10). The Department therefore finds that the Mystic River Agreement is beneficial to the Company and its ratepayers and is also approved.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the agreement for firm vapor service between Berkshire Gas and DOMAC, the agreement for vapor service between Berkshire Gas and Mystic River Energy Corporation, and the agreement for firm liquid service between Berkshire Gas and DOMAC, filed on October 31, 2003, are approved.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).